



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2016

Mr. Hector M. Benavides
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P.O. Box 460606
San Antonio, Texas 78246

OR2016-15602

Dear Mr. Decker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 617653.

The Northside Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named district employee. You state the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You state you will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/open/20060725usdoe.pdf>.

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. See Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses criminal history record information (“CHRI”). Chapter 411 authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See* Gov’t Code §§ 411.042, .087. Section 411.0845 of the Government Code provides in relevant part:

(a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part, “[a] school district ... is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district ... is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] ... employee of the district[.]” *Id.* § 411.097(b). Pursuant to

without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS's electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097 provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the [TEA];

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov't Code § 411.097(d). You assert the information you have marked as page AG-007 through AG-008 consists of CHRI obtained from DPS in accordance with chapter 22 of the Education Code. Based on your representations, we conclude the information at issue constitutes CHRI for the purposes of chapter 411 and is confidential under sections 411.0845 and 411.097(d) of the Government Code. *See* Gov't Code § 411.0845, .097; *see also* Educ. Code § 22.08391(d) (stating CHRI received by school district under subchapter C of chapter 22 of Education Code is subject to section 411.097(d) of Government Code).

However, the requestor is an investigator for the TEA. Section 411.097(d) governs the release of CHRI by a school district. Pursuant to section 411.097(d)(1)(B), the TEA is authorized to obtain from the district the CHRI the district obtained from DPS's electronic clearinghouse. Gov't Code § 411.097; *see also* Educ. Code § 22.08391(d). Therefore, this CHRI obtained pursuant to section 411.0845 is subject to release to this requestor under section 411.097(d)(1)(B). Accordingly, the information at issue must be released to this requestor in its entirety.

Section 552.101 of the Government Code also encompasses section 21.355, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "teacher" means a person

who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Additionally, the courts have concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert pages AG-004 through AG-006 are subject to section 21.355. Upon review, we find this information does not evaluate the performance of a teacher for purposes of section 21.355. Therefore, the district may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert a portion of the submitted information is confidential under section 261.201. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, upon review, we find a portion of the submitted information, which we have marked, consists of a report of alleged or suspected child abuse made to the Texas Department of Family and Protective Services. However, we are unable to determine the age of the victim in the information at issue. Thus, we must rule conditionally. If the victim in the information at issue was under 18 years of age at the time of the incidents in question, then the information we have marked is confidential under section 261.201(a) of the Family Code, and the district must generally withhold it under section 552.101 of the Government Code. If the victim in the information at issue was 18 years of age or older at the time of the incidents in question,

then the information we have marked is not subject to chapter 261 of the Family Code and the district may not withhold it under section 552.101 of the Government Code on that basis.

We note the TEA's request states the requestor is seeking this information under the authority provided to the State Board for Educator Certification ("SBEC") by section 249.14 of title 19 of the Texas Administrative Code. Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits the TEA to obtain information that is otherwise protected by the exception discussed above. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.4. Section 249.14 provides, in relevant part:

(a) The [TEA] staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant [SBEC] denying relief to or taking disciplinary action against the person or certificate.

...

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

Id. § 249.14(a), (c). In this instance, the requestor states he is investigating allegations made against the named district employee, which could warrant disciplinary action relating to that person's educator certification. Thus, we find the information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the submitted information is specifically protected from public disclosure by section 261.201 of the Family Code of the Government Code, we find there is a conflict between this provision and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

Where general and specific provisions are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator. However, section 261.201 of the Family Code specifically protects child abuse or neglect investigative information. Further, we note this provision permits the release of information to certain parties and in certain circumstances that do not include the TEA investigator's request in this instance. Thus, section 261.201 of the Family Code prevails over the TEA's general right

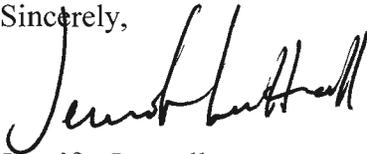
of access, and, notwithstanding the provisions of section 249.14, the TEA does not have a right of access under section 249.14 to the information at issue. Accordingly, if the victim in the information at issue was under 18 years of age at the time of the incidents in question, then the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the victim in the information at issue was under 18 years of age at the time of the incidents in question, then the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must release the remaining information.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 617653

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.